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August 19, 2022

VIA FOIAonline

Records Access Officer
United States Environmental Protection Agency
US EPA Region 2
290 Broadway
New York, New York 10007-1866

RE: Freedom of Information Act ("FOIA") Request re:

Lower Ley Creek OU and Ley Creek Deferred Media OU

Dear Records Access Officer:

Pursuant to the Freedom of Information Act ("FOIA") 5 U.S.C. § 552, and the U.S. Environmental Protection Agency's ("USEPA") implementing regulations, 40 C.F.R. Part 2, it is hereby requested that you make available for public inspection in an electronic format, if possible, the following documents related to the above referenced EPA sites, located in Onondaga County, New York including (without limitation) for the **time period January 2000 through July 2022**:

- Any and all documents, records, emails, correspondence, reports, data, PowerPoints and photographs (hereinafter "records") on which USEPA relied in making the determination that General Electric (GE) "is considered to be a potentially responsible party ("PRP") with respect to **both** the Lower Ley Creek OU and the Ley Creek Deferred Media ("LCDM") OU";
- All correspondence and communications identifying or referring to GE to or from the parties to whom USEPA's 2009 general notice letters were sent ("general notice letter parties") with regard to the Lower Ley Creek subsite OU;
- The Responsiveness Summary and **all** correspondence from the 2009 general notice letter parties concerning the Lower Ley Creek subsite RI/FS and Record of Decision dated September 30, 2014;

- The 2016 administrative order on consent (“LLC RD AOC”) referenced in the USEPA letter, including all correspondence between USEPA and the signatories to the order on consent;
- All drafts of the 2016 administrative order on consent referenced in paragraph #4 above;
- All correspondence and communications identifying or referring to GE as a source or contributor to the contamination of the Ley Creek Deferred Media (“LCDM”) subsite;
- Documents and records that refer in any manner to the “discrete response activities” referenced by USEPA with regard to RACER Trust contained on page 3 of the attached notification letter sent by USEPA to GE.
- Documents and records relating to the soil contamination at the LCDM and the determination referenced on page 3 of the attached USEPA letter that excavation is required for soil contamination at the LCDM, including the determination that soil removal of between 15,000 to 142,000 cubic yards is required.
- All correspondence and communications to and from the law firm of Knauf Shaw LLP regarding the LCDM;
- All correspondence and communications to and from former USEPA Attorney, and counsel to RACER Trust, Carl Garvey regarding the LCDM;
- All correspondence, communications, reports and data from environmental consultants, geologists, engineers, hydrogeologists and/or chemists that establish a nexus between the LCDM and GE;
- All correspondence and communications with government agencies or personnel, whether at the local, county, state, or federal level concerning the LCDM and/or Lower Ley Creek subsites;
- All correspondence and communications with government agencies or personnel, whether at the local, county, state, or federal level concerning the nexus of GE to the LCDM and/or Lower Ley Creek subsites;
- All administrative orders, decrees, stipulations, or agreements between USEPA and PRPs (potentially responsible parties) with regard to the LCDM and/or Lower Ley Creek subsites;
- All witness statements identifying GE as a contributor of contamination at the LCDM and/or Lower Ley Creek subsites; and
- All sampling data and historic information or data regarding GE’s nexus to one or both of the two subsites referenced in the USEPA PRP letter to GE.

For the purpose of this FOIA request, the term “documents” shall be interpreted expansively and shall mean and include, without limitation, any written, typed, recorded, transcribed, printed, taped, photographic, computer or graphic matter or materials, including without limitation, memoranda, reports, applications, requests, correspondence, communications, electronic mail messages, notes, letters, studies, statements, budgets, working papers, agendas, attendance sheets, minutes, analyses, etc. within the custody, possession or control of USEPA. USEPA’s custody, possession or control of records is expansive and includes records that may be in the possession of USEPA’s consultants, contractors or other agents working on the USEPA’s behalf.

As you know, USEPA has twenty (20) working days to respond to this request. If materials requested are deemed privileged or exempt from public inspection, please identify which records fall in that category and the reasons for exemption.

Thank you for your assistance and attention to this matter.

Very truly yours,

/s/ Fatemma R. Shadwick

Fatemma R. Shadwick
Paralegal

Attachment



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 Broadway
New York, NY 10007-1866

GENERAL NOTICE LETTER
CERTIFIED MAIL—RETURN RECEIPT REQUESTED

(See the attached list of addressees.)

Re: Notice of Potential Liability and Request to Perform Remedial Activities for the Lower Ley Creek Operable Unit and Notice of Potential Liability for the Ley Creek Deferred Media Operable Unit of the Onondaga Lake Superfund Site, Onondaga County, New York

Dear Sir or Madam:

The U.S. Environmental Protection Agency (“EPA”) is charged with responding to the release or threatened release of hazardous substances, pollutants, and contaminants into the environment and with enforcement responsibilities under the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. §§ 9601-9675. EPA has documented the release and threatened release of hazardous substances into the environment at two operable units (“OUs”), the Lower Ley Creek OU and the Ley Creek Deferred Media (“LCDM”) OU, which are both part of the Onondaga Lake Superfund Site (“Site”), located in Onondaga County, New York.

This letter serves to notify you that you are considered by EPA to be a potentially responsible party (“PRP”) with respect to both the Lower Ley Creek OU and the LCDM OU. In addition, by this letter, EPA is requesting that you perform the remedial action (“RA”) for the remedy selected for the Lower Ley Creek OU.

SITE BACKGROUND

The Site is comprised of Onondaga Lake itself, six major and minor tributaries, including Ley Creek, and various upland sources of contamination. The Site was placed on EPA’s National Priorities List on December 16, 1994. EPA has organized response activities at the Site into multiple OUs, including the downstream Lower Ley Creek OU and upstream LCDM OU, with the boundary between them being the Route 11 (also known as Brewerton Road) bridge.

Lower Ley Creek

The Lower Ley Creek OU consists of the lower two miles of Ley Creek and the adjacent impacted floodplains beginning at and including the Route 11 bridge and ending downstream at Onondaga Lake. This OU also includes an estimated 3.7-acre wetland situated on the southern bank of the Creek and Old Ley Creek Channel, an original section of the Creek before it was widened and redirected during a flood control project in the 1970s. In addition, the Lower Ley Creek OU includes several sections along the banks of the Creek where dredged contaminated sediments were placed during that flood control project.

On October 30, 2009, EPA sent general notice letters to eight parties—General Motors (“GM”), Syracuse China Company (“Syracuse China”), Cooper Crouse-Hinds, LLC (“CCH”), Niagara Mohawk

Power Corporation (d/b/a National Grid), Carrier Corporation (“Carrier”), Oberdorfer LLC (“Oberdorfer”), Onondaga County, and the Town of Salina—to inform the parties that EPA considered them to be PRPs with respect to the Lower Ley Creek OU and to determine whether the parties would volunteer to conduct or fund a remedial investigation and feasibility study (“RI/FS”) for the OU. None of the noticed PRPs agreed to perform the RI/FS, and EPA performed the work itself. Based on the results of the RI/FS, EPA selected a remedy for the Lower Ley Creek OU on September 30, 2014, which is described in the record of decision (“ROD”) for the OU at the following link: <https://semspub.epa.gov/src/document/02/712034>.

On July 21, 2016, EPA entered into an administrative order on consent (“LLC RD AOC”) with certain PRPs for the Lower Ley Creek OU regarding the performance of remedial design (“RD”) activities. The respondents to the LLC RD AOC include Syracuse China, CCH, Onondaga County, the Town of Salina, National Grid, Carrier, and the City of Syracuse (the last of which received a notice letter from EPA in March 2015).¹ The respondents are currently performing RD activities.²

Ley Creek Deferred Media

The LCDM OU consists of approximately 9,200 linear feet of Ley Creek channel sediments, surface water, and adjacent impacted floodplain soils and sediments upstream of the eastern edge of the Route 11 bridge and downstream of the western edge of the Townline Road bridge. The LCDM OU also includes the following: a 10-acre wetland known as the National Grid Wetland, which is located directly west of the former General Motors-Inland Fisher Guide (“GM-IFG”) facility; soil in a 1.8-acre area known as the Factory Avenue Area, which is located directly between the GM-IFG facility’s northern property boundary and Factory Avenue; soil in the area located along the northern shoulder of Factory Avenue in the vicinity of LeMoyne Avenue; and the National Grid/Teall Avenue Substation access road, known as the NG Access Road. The LCDM OU is also referred to in some documents as OU 2 of the GM-IFG Subsite.³

GM entered into an AOC with the New York State Department of Environmental Conservation (effective September 25, 1997) and an addendum to that order (effective July 11, 1999), pursuant to which it agreed to perform an RI/FS for the LCDM OU as well as for the former GM-IFG facility (“LCDM DEC AOC”). Based on the results of the LCDM OU RI/FS, EPA selected a remedy for the LCDM OU on March 31, 2015, which is described in the ROD for the OU at the following link: <https://semspub.epa.gov/src/document/02/318310>.

¹ Three PRPs for the Lower Ley Creek OU did not agree to sign the 2016 RD AOC: GM, Oberdorfer, and Plaza East LLC. GM filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code and settled its liability to United States through a court-approved bankruptcy settlement in 2012. Oberdorfer discontinued operations and, to EPA’s knowledge, ceased to exist in 2013. Plaza East LLC failed to respond to notice letters issued to the company in 2015 (relating to the performance of the RD) and 2021 (relating to the performance of the RA).

² Syracuse China filed for Chapter 11 bankruptcy relief and settled its liability to the United States for both the Lower Ley Creek and the LCDM OUs through a court-approved bankruptcy settlement in January 2022. The company is no longer obligated to perform RD activities under the 2016 LLC RD AOC.

³ The New York State Department of Environmental Conservation also oversees certain cleanup activities at the Site, and in so doing, it has chosen to subdivide the Site into various “subsites,” to use its terminology, including the GM-IFG Subsite.

On June 1, 2009, GM filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code, and an independent environmental trust known as the Revitalizing Auto Communities Environmental Response (“RACER”) Trust was created to assume certain of GM’s cleanup obligations. The RACER Trust has performed discrete response activities at various upland properties, including the National Grid Wetland, the Factory Avenue Area, and a residential area on Brookline Road. In addition, pursuant to the LCDM DEC AOC, the RACER Trust has performed pre-design investigation activities at the LCDM OU, which resulted in the identification of expanded areas of soil contamination along upper Ley Creek. As a result, the estimated volume of contaminated soils requiring excavation and off-site disposal for the LCDM OU has increased significantly from an estimate of approximately 15,000 to 142,000 cubic yards.

On September 2021, the RACER Trust entered into an AOC with EPA to complete the RD for the LCDM OU and to prepare a Focused Feasibility Study (“FFS”) report to identify and evaluate remedial alternatives that will address the increased volume of impacted soil and associated costs (“LCDM EPA AOC”). The FFS report may provide the basis for EPA to modify the LCDM OU remedy.

Pursuant to the LCDM EPA AOC, the RACER Trust is currently completing the RD for the LCDM OU.

NOTICE OF POTENTIAL LIABILITY

Under CERCLA, PRPs may be required to perform cleanup actions and/or may be held liable for costs incurred in taking response actions at and around sites where there has been a release or a threatened release of hazardous substances. This can include costs incurred performing investigative, planning, removal, and enforcement activities. By this letter, EPA is notifying you that you are considered to be a PRP with respect to the Lower Ley Creek OU and the LCDM OU pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is providing you with the opportunity to volunteer to perform the RAs for the two OUs.

This notice letter is not being provided pursuant to the timeframes set forth in the special notice procedures outlined in Section 122(e) of CERCLA, 42 U.S.C. § 9622(e), because (a) the performance of the RA at the downstream Lower Ley Creek OU must be coordinated with the implementation of the RA at the upstream LCDM OU and (b) EPA intends to modify the remedy for the LCDM OU based on the ongoing FFS, so memorialization of settlement agreements for the implementation of these two remedies within those timeframes would be unavailing and/or impracticable.

REQUEST TO PERFORM RESPONSE ACTION

EPA wishes to determine whether you are willing to negotiate the performance of the remedy selected for the Lower Ley Creek OU. Accordingly, please advise EPA within thirty (30) days of receipt of this letter whether you would be willing to engage in good faith negotiations with EPA concerning the performance of the RA, with EPA’s oversight.

Any agreement to perform or fund the RA at the Lower Ley Creek OU would need to be memorialized in a judicial consent decree with EPA under CERCLA. Enclosed please find an initial draft of a consent decree and accompanying statement of work for the Lower Ley Creek OU RA.

Please email your response to:

Margo Ludmer

Assistant Regional Counsel
New York/Caribbean Superfund Branch
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
Ludmer.Margo@epa.gov

with a copy to:

Victoria Sacks
Remedial Project Manager
Eastern New York Remediation Section
Superfund and Emergency Management Division
U.S. Environmental Protection Agency, Region 2
Sacks.Victoria@epa.gov

Please be advised that there are significant funds available in a Lower Ley Creek OU special account derived from the GM bankruptcy process that are dedicated to funding the performance of the remedy at this OU. Access to these funds may significantly reduce your and any other performing parties' financial burden. If you decline to participate in the RA for the Lower Ley Creek OU and EPA elects to perform the work itself, you may be liable under Section 107(a) of CERCLA to reimburse those costs that EPA incurs performing the work that are in excess of the funds in the special account. EPA also may unilaterally require you to perform the work pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), and in such a case your access to those funds may be limited.

Please give the matter addressed in this letter your immediate attention. If you have any legal questions or would like to discuss this matter with EPA, please contact Ms. Ludmer. Should you have any technical questions regarding the Lower Ley Creek OU or LCDM OU, please direct them to Ms. Sacks.

Sincerely,

Eric Wilson, Deputy Director for Enforcement and Homeland Security
Superfund and Emergency Management Division

Enclosures (by electronic mail only)

Addressee List:

PSC Metals	Mr. Ronald Kline Chief Executive Officer PSC Metals, LLC 5875 Landerbrook Drive, Suite 200 Mayfield Heights, Ohio 44124
Bristol-Myers Squibb Company	Mr. Giovanni Caforio Chief Executive Officer Bristol-Myers Squibb Company 430 East 29th Street, 14th Fl New York, New York 10016
Carlyle Air Conditioning Company Inc	Carlyle Air Conditioning Company Inc. One Carrier Place Farmington, CT Carlyle Air Conditioning Company Inc. 28 Liberty Street New York, NY 10005
General Electric Company	Mr. Michael Holston Senior Vice President, General Counsel & Secretary General Electric Company 41 Farnsworth Street Boston, Massachusetts 02210
New Process Gear Inc.	New Process Gear, Inc. 6600 N Venture Gear Dr, East Syracuse, NY New Process Gear, Inc. 2900 West Road STE 500 East Lansing, MI 48823
Magna Powertrain USA, Inc.	Mr. Tom Rucker President Magna Powertrain USA, Inc. 1235 E. Big Beaver Rd. Troy, MI 48083